# STATE OF MICHIGAN

# COURT OF APPEALS

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BONNIE FORTUIN,

Plaintiff-Appellee,

v

KARL FORTUIN,

Defendant-Appellant.

UNPUBLISHED
April 22, 1997

No. 188398
Kent Circuit Court
LC No. 91-073699-DM

AFTER REMAND

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Before: Bandstra, P.J., and Hoekstra and S.F. Cox*, JJ.

PER CURIAM.

Defendant appeals by leave granted from the property division and child support provision contained in the parties' amended judgment of divorce that was issued following a partial reversal and remand by this Court in September 1994 (Docket No. 165097). We again remand for a redistribution of the parties' marital property.

Pursuant to the first appeal, with plaintiff receiving roughly ninety-six percent of the contested property, this Court found the trial court's division of the marital property to be inequitable. This Court further found that the marital contributions attributable to each party were relatively equal and that there was no significant fault shown by either party. On remand, the trial court was given the specific directive to divide the property in a more "balanced and equitable manner," to assign responsibility for the parties' joint credit card debts, to calculate alimony (if necessary) based upon the parties' actual incomes rather than improperly imputing income to defendant, and to strike the provision allowing for the support of the parties' adult son following his graduation from high school.

Although the trial court appears to have literally complied with this Court's directives for the most part, we find that it again failed to strike the support provision, and it again distributed the parties' marital property inequitably, *Sparks v Sparks*, 440 Mich 141, 151-152; 485 NW2d 893 (1992), and on a basis that is inconsistent with this Court's prior opinion, *Meyering v Russell*, 85 Mich App 547, 552; 272 NW2d 131 (1978).

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* Circuit judge, sitting on the Court of Appeals by assignment.

First, despite the fact that this Court already determined that the parties equally contributed to the marital estate, the trial court nonetheless explained that the disparity in plaintiff's favor was acceptable because plaintiff had contributed a large amount of her pre-marital savings and her inheritance toward the parties' marital estate. Such reasoning is directly contrary to this Court's finding in its September 1994 opinion, and appears to be the only basis upon which the trial court relied.

Second, although the net proceeds from the sale of the marital home were purportedly divided on a sixty-forty basis in plaintiff's favor, the disparity in the overall amended property division is much larger considering the additional awards of the adjoining real estate lot valued at $10,000 and one-half of defendant's pension to plaintiff. Both parties are in their fifties, in good health and employed. Plaintiff has remarried and is no longer eligible for alimony, and the parties' son has graduated from high school and is no longer entitled to child support. We fail to identify any reason or circumstances that would warrant a property division that does not more closely approximate an equal split. In fact, we direct the court upon remand to impose a 50/50 property split because an equal division is fair and equitable under the circumstances of this case. *Hanaway v Hanaway*, 208 Mich App 278, 292; 527 NW2d 792 (1995).

We further conclude that, because defendant did not challenge the weekly child support rate during the initial appeal and did not raise the issue of overpayment or requested reimbursement for prior payments in the lower court on remand, these issues cannot be raised for the first time for our consideration on this appeal. *Deal v Deal*, 197 Mich App 739, 741; 496 NW2d 403 (1993).

We reverse in part and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra
/s/ Sean F. Cox